IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8048 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHORKUMAR N THAKKAR

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Petitioner

MR HV CHHATRAPATI for Respondent No. 1

NOTICE SERVED for Respondent No. 5

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 10/03/2000

ORAL JUDGEMENT

1. Heard Learned Advocate Mr.Y.S.Mankad for the petitioner. Nobody remained present for the respondents. Mr. Mankad has taken me through the averments made in

the petition. Learned Advocate appearing for the petitioner has contended that the petitioner should be granted appropriate relief in view of the facts and circumstances of this case.

2. This petition is under Article 226 of the Constitution of India. The reliefs prayed by the petitioner are as under :

(A) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, directing the respondents no.2, 3 and 4 to re-construct and re-build the suit-shop, as it was in original condition at its original place, and the respondnets do pay compensation for the illegal action, done in bad faith and without any justification, as the petitioner has suffered in business andd prestige.

(B) That pending the hearing and final disposal of this petition, the respondents, their servants, subordinates and agents be restrained by an order of interim-injunction, from stopping or obstructing the petitioner in carrying on business on the land of the suit shop and from making it in workable condition.

(C) That pending hearing and final disposal of this petition, the respondent no.5, Gram Panchayat, may restrained by an order of interim-injunction from erecting any Statue on the land of the shop or from making any use of the said land whatsoever nature.

3. On querry being raised as to whether the ptitioner can be granted any of the reliefs prayed for in this petition, in response thereof, the Learned Advocate for the petitioner has drawn the attention of this Court on a decision in Special Civil Application No. 7720/88 dated 28th August,1998 (Coram : S.K.Keshote,J). Learnd Advocate for the petitioner has also relied on a decision of this Court in Special Civil Application No. 1571/89 dtd. 30th April,1991 (Coram : C.K.Thakkar,J). According to Mr. Mankad, the decision of this Court in case of Special Civil Application No.7720/88 (supra), clearly applies to the facts of this case because the

facts are very much similar. The cabin in the town Nakhatrana of District Kuttch was forcibilly demolished during the drive of removal of cabins without scrutinizing the documents and authorization of erected structure. I would like to refer the relevant portion of the order passed by this Court in above mentioned Special Civil Application No.7720 of 1988 :-

"2. It is unfortunate that even such a matter has been taken by the respondents very casually and lightly. Reply has not been filed and as a consequence thereof the Court has to accept whatever averments have been in this Special Civil Application by the petitioner to be correct. However, Mrs. Siddhi Talati, learned counsel appearing for the respondents orally contended that the land was acquired way back in the year 1955 for public purposes. But I do not find anything on record in support of this contention. It is a question of fact, and more so a question of issuance of notification under sections 4 and 6 of the Land Acquisition Act to be published in the official Gazette. But nothing has been produced on record. Be that as it may. The fact is that demolition activity has been started against the petitioner without any notice and without affording an opportunity of hearing. The fact that the petitioner is in possession of the premises since 1964 and carrying on her business of 'Ranjana Lodge' is not in dispute. Even if it is taken that land was acquired in the year 1955, then the impugned action has been taken after more than 33 years and as such it could have been done only in accordance with law, which required at least giving full opportunity of hearing, making submissions and establishing her case to the petitioner. In view of this fact, the activity taken out by the respondents cannot be allowed to stand. Action of the respondents in taking of demolishing activities in respect of the premises is wholly aribtrary and unjust."

4. I am in full agreement with the verdict of this Court. Under the circumstances, petition is allowed.

Rule issued by this court earlier is made absolute accordingly. No costs. However, it is observed that this would not come in the way of the respondent Panchayat or the State Government to proceed against the petitioner in accordance with law, in case of exigency or necessity.

(C.K.Buch)

(Vipul)